

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL MEMORANDUM

HB 2275 – SB 2318

June 11, 2009

SUMMARY OF AMENDMENTS (009896, 009959): Amendment 009896 deletes the language of the original bill. Sections 1 through 27 amend multiple sections of tax law related to economic development incentives: Sections 1 through 14 rewrite the job tax credit so the amount of credit remains at \$4,500 per job regardless of the county in which the job is created, reduces the minimum job requirement in connection with a capital investment of at least \$1 billion from 1,000 to 500 qualified jobs, and repeals the daycare credit; section 15 authorizes the industrial machinery credit earned by a taxpayer investing at least \$1 billion in the state to be carried forward until completely utilized; sections 16 and 17 increase from \$50,000 to \$100,000 per job the relocation expense credit available to a headquarter facility that has invested at least \$1 billion and created at least 500 new jobs in the state; sections 18 through 23 includes the cost of computer software in determining a qualified company's required capital investment for purposes of determining data center, headquarter facility, emerging industry, and industrial machinery tax credits, and extends the \$1 billion investment period for purposes of determining industrial machinery tax credits from a maximum of 5 years to a maximum of 7 years; section 24 extends the investment period for a data center from a maximum of 5 years to a maximum of 7 years; section 25 changes the definition of "emerging industry" for the purpose of determining emerging industry tax credits; and sections 26 and 27 amend the green energy tax credit by authorizing the credit to green energy manufacturers as well as separate companies that are integrated into the green energy manufacturer's operations at its project site.

Sections 28 through 34 amend various provisions of franchise and excise tax law: Sections 28 through 30 change the definition of "passive investment income" as it relates to excise taxes levied on family-owned non-corporate entities (FONCEs), and creates a rental rate provision of up to two percent of appraised value per month; sections 31 and 32 establish a minimum penalty of \$10,000 for failure to disclose transactions involving an intangible expense deduction or a captive real estate investment trust (REIT) dividends. These sections further authorize the Commissioner of Revenue to waive the penalty under certain circumstances; section 33 requires taxpayers claiming franchise and excise (F&E) tax exemptions to file an annual exemption application, and imposes a \$1,000 penalty for failure to file an application; and section 34 changes the definition of "publicly traded REIT" for F&E tax purposes to clarify

that the entity must be traded on a regulated national securities exchange of the United States or foreign country.

Sections 35 through 73 amend various provisions of sales tax law: Sections 35 through 49 delay implementation of the remaining Streamlined Sales Tax Agreement provisions from July 1, 2009 until July 1, 2011; section 50 increases from 7.5 percent to 9.5 percent the state sales tax rate imposed on interstate or international telecommunications services sold to businesses; sections 51 through 53 require companies that provide television services to pay sales and use tax on equipment used to provide service to subscribers; sections 54 through 57 declare that the existing tax on computer software maintenance contracts apply to contracts covering software located in this state; section 58 declares that “in-house” computer software exemptions apply only if the software is created by the taxpayer or its employees and does not apply when the software is created by an employee of another company; sections 59 and 60 declare that the application of taxes on advertising materials only apply to final artwork and advertising materials, not to preliminary artwork used by advertising agencies solely for conveying concepts or ideas; section 61 declares that hotels must pay tax on the purchase of food and beverages provided to guests as part of lodging accommodations, and authorizes a hotel to purchase food and beverages on a resale certificate without payment of tax if the food and beverages are served in a restaurant open to the public; section 62 authorizes a credit for tax paid on aviation fuel sold to air common carriers and subsequently used by the carriers in an international flight; section 63 allocates state taxes collected on ticket sales to performing arts centers for exclusive use in maintaining and improving the performing arts center facilities; section 64 allocates sales tax revenue collected from commercial breeders licensed under the Commercial Breeder Act to the Commercial Breeder Act Enforcement and Recovery Account; sections 65 and 66 make changes to the local privilege tax levied on tickets to events at municipal stadiums, exempts events for the benefit of public colleges or universities, providing that state and local sales tax not apply to amounts of local privilege tax, and authorizes the tax to continue after stadium indebtedness has matured; sections 67 and 68 declare that sales tax revenue generated by non-sporting events at an indoor sports facility in a county with a metropolitan form of government will be allocated to the Metro Convention and Visitors Bureau rather than to the Metro Sports Authority; sections 69 through 71 levy a professional privilege tax equal to \$2,500 per game with a three game annual cap on National Basketball Association (NBA) and National Hockey League (NHL) players who play games in Tennessee, with proceeds allocated to the respective municipality; sections 72 and 73 modify existing sales and use tax exemptions for services provided by one company to affiliated companies by allowing the exemption to apply to any form of the entity rather than being restricted only to the corporations.

Sections 74 through 109 amend multiple other provisions of law related to the Department of Revenue (DOR): Sections 74 through 98 shift primary administration and collection of the business tax from local government to DOR; section 99 reduces the threshold from \$2,500 to \$1,000 for required electronic filing of sales and use tax returns, and declares that quarterly estimated payments for F&E tax must be remitted electronically if the payment exceeds \$2,500; sections 100 and 101 authorize DOR to participate in the Multistate Tax Commission Joint Audit Program; section 102 establishes an automatic extension period of twelve months to file inheritance tax returns and authorizes the estate to include a copy of a federal extension with its state tax return filed on the extended due date, in lieu of filing for an extension before the statutory due date; section 103 updates obsolete references to petroleum tax law; section 104 prohibits the penalty for unauthorized use of dyed motor fuel from applying to agricultural vehicles used solely for transferring harvested crops from the field to storage facilities if the distance traveled does not exceed five miles; sections 105 and 106 modify the statute regarding TVA payments in lieu of taxes by establishing that DOR, instead of the Comptroller, calculate the payments made to local governments; section 107 declares that the state be deemed the prevailing party for the purpose of awarding attorney fees in any case in which the taxpayer has been found by the court to have committed fraud; sections 108 and 109 change the property tax provisions concerning the redemption of property and forced assessments; and sections 110 and 111 remove qualified commercial financing entities from the provision that assess the stockholder on shares of stock in lieu of assessing the company on its capital stock.

Sections 112 through 135 amend various provisions of motor vehicle title and registration law: Section 112 authorizes DOR to accept credit and debit cards for payment of titling and registration fees, and authorizes DOR to pass on to registrants any third-party surcharge or convenience fees; section 113 increases from \$5.00 to \$5.50 the fee due DOR for noting of liens or for extensions of mortgages on a certificate of title; sections 114 and 115 declare that post office boxes are not sufficient proof of residency for purposes of issuing a certificate of title or registration; section 116 modifies language regarding registration fees for buses; section 117 authorizes the Commissioner of Revenue to capture signatures electronically for the purpose of motor vehicle titling; section 118 authorizes DOR to extend the period between the issuance of new metal plates from five years to eight years; sections 119 through 131 create a new license plate for company vehicles owned by automobile manufacturers headquartered in this state, authorizes such company vehicles to be exempt from title and registration fees and sales tax, and authorizes manufacturers to apply for exemptions from county wheel tax; section 132 declares that trailers used in the furtherance of a business must be titled and registered (excludes trailers owned by farmers and used for agricultural purposes); sections 133 and 134 change language from the "Department of Safety" to the "Department of Revenue" to reflect the movement of

responsibilities between departments; and section 135 requires that a seller's signature on a motor vehicle bill of sale be notarized.

Section 136 adds provision concerning the treatment of prosthetic surgical kits for the purpose of determining property tax; section 137 adds provision relative to the assessment of F&E tax when a qualified headquarters facility has not been utilized as a headquarters facility for a period of ten years and job tax credits were issued to the business entity; and section 138 is the effective date section for the bill as amended.

Amendment 009959 deletes the language "by this part under § 67-4-2008(a)(9) or (11)" in its entirety from Section 30 of the bill as amended by amendment 009896 and substitutes instead the language "by this part".

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Revenue - \$250,000

Increase Local Revenue - \$2,700,000/Permissive

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

**Increase State Revenue – Net Impact - \$61,000,000/Recurring
Forgone State Revenue – Exceeds \$1,000,000/Recurring**

**Increase State Expenditures - \$562,100/One-Time
\$1,360,300/Recurring**

Increase Local Revenue – Net Impact - \$28,495,400/Recurring

Other Fiscal Impact - A decrease of expenditures from the Highway Fund estimated to average \$581,000 per year when amortized over eight years. Extending the end of the replacement cycle from CY11 to CY14 will not result in any reduction in actual expenditures from less frequent issuance of registration plates until FY10-11 and FY11-12. In addition, a significant decrease of state revenue of unknown amounts is anticipated if a federal carbon tax is levied in the future.

Revenue assumptions applied to amendments:

- The fiscal impact of sections 1 through 26 plus section 137 (the rewriting of the F&E job tax credit laws) is dependent upon multiple unknown factors, including but not limited to, the number of the entities that will locate to Tennessee as a result of such job tax credits,

the number of jobs they create, the number of entities with a current presence in Tennessee that will qualify for job tax credits as a result of this bill, and the F&E tax liabilities of any qualifying entity.

- Given the extent of unknown factors, it is reasonable to assume that some entities with a current presence in Tennessee will qualify for tax credits where the entities would not have qualified under current law. It is also reasonable to expect that some entities will desire to establish operations in Tennessee in the future and create new jobs as a result of these incentives. Therefore, the fiscal impact to state revenue for these provisions is two-fold, estimated as a decrease to state revenue exceeding \$4,000,000 per year and forgone state revenue exceeding \$1,000,000 per year.
- The fiscal impact relative to extending the green energy tax credit to certain qualifying manufacturers (section 27) is dependent upon several unknown factors, including but not limited to, future energy rates paid by certain qualifying entities and the future levy of a federal carbon tax. Currently, there is no carbon tax at the federal or state levels. However, if this tax is levied in the future, there could be a significant decrease of revenue that will occur as a result of this bill as amended. Given these unknowns, the extent of any such decrease cannot be reasonably quantified.
- Eliminating real property rents from the definition of “passive investment income” (sections 28 through 30) will increase state revenue. Based on information provided by DOR, state revenue is estimated to increase by an amount greater than \$25,000,000 per year.
- Based on information provided by DOR, imposing a minimum \$10,000 penalty for failure to disclose certain intangible expenses and REIT dividends for the purpose of determining F&E tax liability (sections 31 and 32) will increase state revenue by approximately \$500,000 per year.
- According to DOR, imposing a \$1,000 penalty for failure to file an annual F&E tax exemption application (section 33) will result in additional revenue for the state. The increase to state revenue is estimated to be \$250,000 per year.
- According to DOR, sections 34 through 49 will not have a significant impact on state or local government revenue.
- Based on information provided by DOR, increasing the interstate telecommunications tax to businesses by two percent (section 50) is estimated to increase state revenue by approximately \$6,000,000 per year.
- Applying sales tax to cable boxes, digital video recorders, and other equipment related to providing television programming services to customers (sections 51 through 53) will increase state and local government revenue. Based on information provided by DOR, the increase to state revenue is estimated to be \$2,000,000 per year; the

increase to local government revenue is estimated to be \$700,000 per year.

- Extending sales and use tax to software maintenance agreements (sections 54 through 57) will increase state and local government revenue. Based on information provided by DOR, the increase to state revenue is estimated to be \$9,000,000 per year; the increase to local government revenue is estimated to be \$3,000,000 per year.
- Ending the in-house computer software exemption for company agents (section 58) will increase state and local government revenue. Based on information provided by DOR, the increase to state revenue is estimated to be \$1,500,000 per year; the increase to local government revenue is estimated to be \$500,000 per year.
- According to DOR, sections 59 through 68 will not have a significant impact on state or local government revenue.
- Based on information provided by DOR, assessing a \$2,500 per game privilege tax on professional athletes competing in Tennessee for a maximum of three games per year (sections 69 through 71) is estimated to increase local government revenue by approximately \$1,000,000 per year.
- According to DOR, sections 72 and 73 will not have a significant impact on state or local government revenue.
- According to DOR, shifting the administration and collection of business tax from local government to DOR (sections 74 through 98) will increase total business tax revenue significantly. Based on information provided by DOR, total business tax revenue is estimated to increase by approximately \$46,000,000 per year. Under current apportionment law, the state will retain approximately \$21,000,000 of this revenue per year and local governments will receive approximately \$25,000,000 per year.
- According to DOR, sections 99 through 111 will not have a significant impact on state or local government revenue.
- Section 112 authorizes DOR to accept debit and credit cards. This language was part of HB2331-SB2289 proposed during the current legislative session. For this bill, DOR indicated that any costs incurred will be offset by a reduction of expenditures associated with bad checks and supplemental fees charged to those who utilize such methods of payment. As a result, any net impact to state revenue is considered to be not significant.
- Increasing the fee from \$5.00 to \$5.50 for the noting of liens and extensions to mortgages (section 113) will increase local government revenue pursuant Tenn. Code Ann. § 55-6-101(c)(1). This language was part of HB2331-SB2289. The corrected fiscal impact for this provision of HB2331 indicated an increase to local government revenue of \$395,400 per year.
- The declaration that post office boxes are not sufficient proof of residency (sections 114 and 115) was also part of HB2331-SB2289. The

fiscal impact for this provision of HB2331 reflected a not significant impact to state or local government revenue.

- The provision regarding the registration of buses (section 116) was also part of HB2331-SB2289. The fiscal impact for this provision of HB2331 reflected a not significant impact to state or local government revenue.
- Establishing a method for accepting electronic signatures in connection with motor vehicle title applications (section 117) was also part of HB2331-SB2289. The fiscal impact for this provision of HB2331 reflected a not significant impact to state or local government revenue.
- Extending the plate issuance period from five years to eight years (section 118) is not anticipated to have a revenue impact (see expenditures assumptions below).
- Based on information provided by DOR, exempting the lease of motor vehicles by original equipment manufacturers (automobile manufacturers) for headquarters employees from sales tax (sections 119 through 131) is estimated to decrease state revenue by approximately \$250,000 per year and decrease local government revenue by approximately \$100,000 per year.
- The declaration that trailers used in the furtherance of a business must be titled and registered, except for trailers owned by farmers (section 132) was also part of HB2331-SB2289. The fiscal impact for this provision of HB2331 reflected a not significant impact to state or local government revenue.
- Sections 133 and 134 make technical corrections (also part of HB2331-SB2289) with revenue impacts to state and local government estimated to be not significant.
- Requiring that a seller's signature on a motor vehicle bill of sale be notarized (section 135) was also part of HB2331-SB2289. The fiscal impact for this provision of HB2331 reflected a not significant impact to state or local government revenue.
- According to DOR, the provision concerning the treatment of prosthetic surgical kits for the purpose of determining property tax (section 136) will decrease local government revenue. Based on information provided by DOR, the decrease to local government revenue is estimated to be \$2,000,000 per year.
- According to DOR, amendment 009959 to the bill as amended by 009896 has an insignificant impact on the estimated revenue collection associated with the FONCE provisions.
- The total net increase to state revenue is estimated to be \$61,000,000 per year $[(\$25,000,000 + \$500,000 + \$250,000 + \$6,000,000 + \$2,000,000 + \$9,000,000 + \$1,500,000 + \$21,000,000) - (\$4,000,000 + \$250,000)] = \$61,000,000$.
- The total net increase to local government revenue is estimated to be \$28,495,400 per year $[(\$700,000 + \$3,000,000 + \$500,000 +$

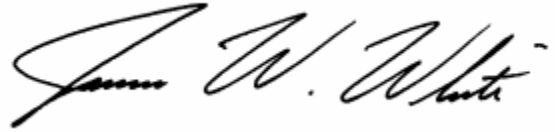
$\$1,000,000 + \$25,000,000 + \$395,400) - (\$100,000 + \$2,000,000) = \$28,495,400]$.

Expenditure assumptions applied to amendments:

- Extending the plate issuance period from five years to eight years (section 118) was part of HB2331-SB2289. The fiscal impact for this provision of HB2331 indicated an average decrease to state expenditures of \$581,000 per year from the Highway Fund when amortized over eight years.
- Based on information provided by DOR, the Department will require significant additional resources to implement the provisions of this bill as amended. The Information Technology Resources (ITR) Division will need one additional Information Systems Consultant position; Taxpayer Verification Services (TPVS) will require three additional Taxpayer Services Representative 3 positions; the Audit Division will require two Tax Auditor 2 positions; the Processing Division will require ten additional various positions; the Fiscal Division will require one new personnel position; and the Tax Enforcement Division will require five new positions. Total number of positions required is estimated to be 22.
- The recurring increase to state expenditures associated with the 22 additional positions is estimated to be \$1,110,300 per year (\$619,100 salaries; \$368,800 benefits, \$122,400 other). One-time state expenditures associated with the new positions are estimated to be \$87,100 (computers, software, telecommunications, etc.).
- There will be an additional increase to recurring state expenditures for the Department of Revenue's Revenue Integrated Tax System (RITS) as a result of processing a significant number of additional tax returns electronically due to the lowering of the threshold for mandatory filing of sales tax returns from \$2,500 to \$1,000, and the new requirement that quarterly F&E tax liabilities greater than \$2,500 be paid electronically (section 98). Based on information received from DOR, this increase to recurring state expenditures is estimated to be \$250,000 per year.
- Additional one-time state expenditures for computer and software modifications (for TRUST and RITS systems) estimated to be \$475,000.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" and last name "White" clearly legible, and "W." in the middle.

James W. White, Executive Director

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